* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ BAIL APPLN. 1835/2006

Reserved on :July 13, 2007
Decided on : July 27,2007

ABDUL MAJID BHATT ..... Petitioner
Through Mr. R.M. Tufail, Mr. Anwar A. Khan, Mr. Farooq Dhaudhary, Advocates

versus

STATE ..... Respondent
Through : Mr. Pawan Sharma, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat:

1. The applicant seeks bail under Section 439, Cr.P.C. His first application was rejected by the trial Court on 20-5-2006. He is charged with commission of offences under Sections 489C/120B/307/353/186/34 IPC, 1860 and 25/27/54/59 Arms Act and under Section 3/5 Explosive Substances Act.

2. According to the prosecution version, secret information was received by SI Ravinder Kumar Tyagi about movement of Kashmir-based militants who were allegedly

trying to build a terrorist base in Delhi and launch a terrorist attack. According to the information, the Police arranged a raid on the forwarned date i.e 02/07/2005. At about 12.45 AM, a blue-coloured Tata Indica car was seen coming from Gurgaon border side. The police signaled it to stop; however, it sped away. The police chased it and ultimately managed to stop it near Randhawa Far House, Village Samalkha within the jurisdiction of P.S. Kapashera. The four accused persons sitting in the car were finally arrested after an ambush between them and the police.

3. Learned counsel argued although according to the prosecution version the accused was arrested on 11th July, 2005, but in reality the applicant was apprehended by the Special Cell on 8th July, 2005 from his residence at Srinagar. Learned counsel argued that this is substantiated by the IO's statement in the application requesting for permission to destroy the hand grenade. It was averred that the petitioner was arrested from Srinagar on 8th July, 2005. This is further corroborated by the application filed by Ms. Rohan Ara, wife of the accused before SSP, Srinagar on that date.

4. The counsel for the applicant argued that even if the petitioner was arrested from Pahar Ganj at Delhi as alleged not a single person from the general public was a witness to the arrest notwithstanding the fact that the locality, near New Delhi Railway Station is a very congested area. This falsified the prosecution version.

5. Counsel for the applicant further urged that the recovery memo prepared by the ASI Charan Singh and signed by constable Zafar Khan is unsigned by the ASI himself. This casts doubts on investigation and is reflective of the paper work being done in the Special Cell to somehow implicate innocent persons. Thus, it clearly shows that the

entire recovery is false and fabricated and it is also inadmissible under the Indian Evidence Act, 1872. Furthermore, the applicant's disclosure statement to the special cell is not signed by him. Instead it was signed by the co-accused.

6. The counsel for the applicant contended that the accused was falsely implicated whereas the fact of the matter is that in reality he was a Government agent to counter the militancy in Kashmir and he was rewarded for it. It is out of personal grudge and animosity that he was falsely implicated in the case. Learned counsel for the petitioner brought to the attention another glaring inconsistency that whereas the disclosure statement has been shown to be made on 12th July, 2005; recovery of the alleged detonation is shown on 11th July, 2005. Thus disclosure statement was recorded a day after the recovery was made. Moreover, the recovery memo does not mention the place where the three detonators were found.

7. Counsel lastly submitted that the supplementary statement of Constable Zafar Khan in addition to his statements recorded under Section 161 Cr.P.C. is shown on prior dates which is prima facie inconsistent, since it is logically impossible to have a supplementary statement prior to the recorded statement.

8. The application was opposed by learned APP, Shri Pawan Sharma. He relied upon the order on charge framed on 20th May, 2006, by the trial Court, where the Court was unimpressed with the very submissions sought to be advanced here. He further submitted that the applicant was arrested pursuant to the statements made by the co-accused. According to that statement, the applicant was the supplier of arms; he belonged to the Al-Umar militant group. Counsel disputed that there was no discrepancy about the

date of arrest of the applicant, or glaring improbability about the place of arrest. According to him the trial is in an advanced stage and depositions of 11 prosecution witnesses have been concluded.

9. The factual matrix, as evident from the above narrative is that the prosecution alleges that it acted upon a tip off, and intercepted a vehicle, allegedly carrying co-accused, who were armed. The further story is that after arrest of the co-accused and on the basis of their statements, the applicant was arrested on 11-7-2005. Considerable reliance has been placed upon an application moved by the police in August, 2005, stating that raids were conducted in Kashmir and that the present applicant was arrested. This, and the sheer improbability of the applicant's arrest in a crowded area like Paharganj, in the absence of any public witness has been urged as the basis for falsifying the prosecution version.

10. In this case, charges were admittedly framed by the trial court, more than a year ago. The order on charge has noted the very same arguments advanced in these proceedings, in support of the request for bail. Yet, the court was unimpressed by them. It proceeded to frame the charges against the applicant. The trial has commenced; several prosecution witnesses have been examined.

11. I have carefully examined the application filed by SI Maninder Singh, requesting the trial court to permit detonation of the explosives allegedly recovered in this case. The relevant averment is as follows:

> *" During investigation, further raids were conducted in Kashmir and accused mentioned in serial No. 5 was apprehended. Besides, an AK-47 Assault rifle, 2 magazines 135 live cartridges of AK-47, 15 grenades (2 Chinese hand grenade & 13 UBGL), 1 radio set etc. were recovered at the instance of accused mentioned at Sl. No 1 & 4 from Srinagar and accused mentioned at Sl No. 6 was also arrested from Srinagar. On 11-7-2005 accused Abdul Majid Bhat was arrested in this case along with 3 detonators."*

12. The first impression gained from the above averments would no doubt lend credence to the applicant's position. The first sentence does suggest that the applicant was arrested in Srinagar. However, the succeeding averments clearly demarcate the recoveries made and the manner they were found; i.e at the instance of the other co-accused. The last sentence states that the present applicant was arrested on 11-7-2005. However, the place of arrest of the applicant is not mentioned. On a careful analysis, I am unpersuaded by the submission of the applicant that this supports his version about the arrest in Srinagar and not in Delhi. The application was for the purpose of detonation of explosives; it merely described the arrest of various accused. At the stage of consideration of a request for bail, after framing of charges, it cannot be read too closely, as is suggested by the applicant. So far as the inherent improbability of the arrest at Paharganj in

Delhi is concerned, there could have been myriad reasons why no member of the public was associated. This may be a strong argument in defence but not such a powerful one as to compel the court to grant bail.

13. The factors which required to be considered by the Court before granting bail to the accused are : (a) the nature of accusation and the severity of punishment in the case of conviction and the nature of supporting evidence; (b) reasonable apprehension of accused tampering with the evidence or apprehension of threat to the complainant; (c) *prima facie* satisfaction of the Court in support of the charge. (Ref *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav,* (2004) 7 SCC 528. In this case, the allegations against the applicant are not only serious, he has been charged with the offences. The punishment prescribed, if the applicant is found guilty, is severe. Trial has already begun. Undoubtedly, grant or refusal of bail is a matter of discretion. That discretion is to be exercised judiciously. Having regard to all the factors, I am of the opinion that the discrepancies highlighted on behalf of the applicant do not so fundamentally challenge the prosecution version so as to tilt the balance in his favour, at this stage, for the grant of bail.

14. For the above reasons, I am of the opinion that this bail application cannot be granted; it is therefore, dismissed.

July 27, 2007 S. RAVINDRA BHAT, J